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EXAMINER

HEYER, DENNIS

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Attached Continuation Sheet (from 11):

Applicant has amended Claims 1 and 12 to recite the limitation that the liquid formulation suspending glassy or amorphous particles comprises a 'liquid hydrofluorinated' ether. Further, Applicant has required that the effect of said liquid comprising a hydrofluorinated ether facilitates 'the dispersion of the liquid'.

The amendments to Claims 1 and 12 will be entered but do not place the Claims in condition for allowance for the following reasons:

Applicant states that the amended Claims, requiring a hydrofluorinated ether, are distinguished over the prior art of Roser in view of Johnson and Owens because the examples in the Johnson reference are drawn to hydrofluoroalkanes (HFA's) which are distinct from the hydrofluorinated ethers used in the present invention (Remarks, page 5, lines 2nd paragraph). Applicant states that although Johnson discloses from a list of potential propellants, some hydrofluoroethers, the list is speculative as to whether a hydrofluoroether would provide suitable suspension stability properties (Remarks, page 5, 3rd paragraph). Applicant states that the stabilized pharmaceutical aerosol of Johnson appears to be achieved by incorporation of a soluble perfluoropolyether absorbed onto a solid particulate drug material to afford suspension stability of certain HFA's (Remarks, page 5 – page 6, bridging paragraph). Applicant states that disclosure of hydrofluoroethers (HFE's) by Owens does not correct the deficiency of Johnson because Owens does not teach stabilizing formulations containing a

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particulate material and is silent on the use of hydrofluorinated ethers in facilitating dispersion/suspension stabilizing properties in liquid formulations (Remarks, page 6, 3rd paragraph).

Applicant's arguments have been carefully considered but are unpersuasive for the following reasons: The failure of the Examples of Johnson to disclose any of the hydrofluorinated ethers in the list on column 2, lines 59 – 64 does not constitute a teaching away from a broader disclosure or nonpreferred embodiments. A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill the art, including nonpreferred embodiments. (see MPEP 2123 [R-5]. Based on the disclosure of hydrofluoroethers by Johnson one of ordinary skill would have considered hydrofluorinated ethers as a reasonable alternative to the perfluorinated alkanes of Roser, and the hydrofluoroalkanes (HFA's) and perfluoropolyethers disclosed in the Examples of Johnson because hydrofluorinated ethers are disclosed from a readily envisaged list of about thirty fluorinated propellants. Further, the Johnson reference is directed to the property of improving the dispersion properties of suspended particles by using compositions comprising fluorinated ethers and hydrofluorinated alkanes. Accordingly, Johnson renders obvious the amendment in Claim 1 directed to "facilitating the dispersion property a liquid" which comprises a hydrofluorinated ether.

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Finally, the Owens reference is cited as motivation for one of ordinary skill in the art to specifically select a hydrofluorinated ether from the list of propellants disclosed by Johnson because Johnson teaches that the art-recognized propellants of choice have been shown to cause depletion of the ozone layer. As noted on page 11 of the Office Action mailed 12/3/2009, Owens teaches the advantages of hydrofluorinated ethers, including liquid HFE's such as HFE-7100, with respect to global warming (Office Action, page 11, 1st paragraph).